

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 16, 2009 Session

RICHARD JOHNSON v. SHAD CARNES

**Appeal from the Circuit Court for Rutherford County
No. 57285 J. Mark Rogers, Judge**

No. M2008-02373-COA-R3-CV - Filed October 29, 2009

The trial court dismissed plaintiff's allegations of defamation against his former minister based upon the Ecclesiastical Abstention Doctrine. Finding that the letter was inextricably intertwined in discipline and/or expulsion of a church member and determination of the claim will necessitate examination of the grounds of the discipline/expulsion, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed**

PATRICIA J. COTTRELL, P.J., M.S., delivered the opinion of the court, in which ANDY D. BENNETT and RICHARD H. DINKINS, JJ., joined.

Frank Morriss Fly, Murfreesboro, Tennessee, for the appellant, Richard Johnson.

William S. Scott, Colleen Marie Sweeney, Nashville, Tennessee, for the appellee, Shad Carnes.

OPINION

Richard Johnson sued the minister of the Fellowship Baptist Church, Shad Carnes, for defamation and negligence. The trial court granted Rev. Carnes' motions to dismiss under the Ecclesiastical Abstention Doctrine, and Mr. Johnson appeals.

The complaint makes the following allegations. Mr. Johnson attended the Fellowship Baptist Church (the "FBC") in Mt. Juliet for 70 years and served as trustee of the church for 30 years. In March of 2008, Rev. Carnes gave an attorney, Mr. Castelli, false and defamatory information about Mr. Johnson, which defamatory information was then placed in a letter. According to Mr. Johnson, Rev. Carnes then read this letter to the entire congregation during a regular Sunday morning church service on March 30, 2008. While Mr. Johnson was not identified as the subject of the letter at the reading, due to the circumstances, Mr. Johnson asserts that everyone knew the letter's remarks were about him.

Mr. Castelli's letter was addressed to Mr. Johnson, with copies to First Baptist Church. The letter was attached to the complaint, was dated March 17, 2008, and provides as follows:

I have been retained on behalf of Fellowship Church to demand that you immediately cease abusive and threatening telephone calls, offensive language, threats of physical harm and other inappropriate contact to its members and board. As the Church had to take the extraordinary measure of having to call the Rutherford County Sheriff's Department to have you removed from the premises, this letter is intended to make clear that you are not to come back onto the property located at 7391 North Lamar Road, Mt. Juliet, Tennessee, 37122. Any attempt to come on the Church property or on Mr. Carnes's residence for any reason will be viewed as Criminal Trespass pursuant to T.C.A. §§ 39-14-405 - 406. In such an event, the authorities will be contacted immediately and your arrest sought.

Moreover, you have and continue to make threatening and harassing phone calls to Mr. Carnes, Members and Deacons of the Church and the Concord Baptist Association. Please cease and desist all such harassing calls. Continued calls threatening Mr. Carnes life, health or his family will be deemed harassment pursuant to T.C.A. § 39-17-308 and dealt with to the full extent as allowed by law.

The Church and Mr. Carnes desire to end this unfortunate turn of events peaceably. Therefore, they ask that you go your separate way and refrain from any future contact with the Church, its Pastor, Deacons or members.

Your cooperation in this matter is appreciated.

Mr. Johnson also alleges that Rev. Carnes told church members and Mr. Johnson's wife that Mr. Johnson was a "bad influence."

Mr. Johnson alleges that these statements are false, defamatory, and compensable. According to the complaint:

Plaintiff's reputation for good character in the community and in the church has been damaged or destroyed by the false accusations made by Defendant against Plaintiff. Indeed, Defendant caused Plaintiff to be expelled from his lifelong church. Mr. Castelli's letter to Plaintiff dated March 17, 2008, which Defendant read to the church congregation ordered Plaintiff not to come back upon church property and stated that if he did so Plaintiff would be arrested for the crime of trespassing under TCA § 39-14-405, et seq.

The trial court granted Rev. Carnes' motion to dismiss under the Ecclesiastical Abstention Doctrine. The court's order incorporated its ruling from the bench that provided as follows:

The case at hand presents a defamation and negligence action that stems from a letter written by Defendant's attorney to the Plaintiff instructing the Plaintiff to cease abusive and threatening phone calls, offensive language, threats of physical harm and other inappropriate contact with the members of Fellowship Baptist Church.

That's set forth in the Complaint, Exhibit 1. The letter, in part, states, "This letter is intended to make clear that you are not to come back onto the property located at 7391 North Lamar Road, Mt. Juliet, Tennessee, 37122

It is clear from the wording, the letter, attached as Exhibit 1 to Plaintiff's Complaint filed June 12, 2008, was and intended to be an exclusionary notice to the Plaintiff.

The Plaintiff claims that he has been falsely accused of committing crimes which would be actionable per se, as set forth in Paragraph 10. However, the letter attached to the Complaint indicates, "Any attempt to come on . . .", and there is other wording, and "You have and continue to make . . .", with other wording, will be viewed and/or deemed as violations of T.C.A. 39-14-405, 406 and/or T.C.A. 39-17-308.

In his Response to Defendant's Special Motion to Dismiss, Plaintiff states, "Plaintiff does not assert claims for wrongful expulsion or excommunication from Fellowship Baptist Church."

However, in his Complaint, Plaintiff states, "Indeed, Defendant caused Plaintiff to be expelled from his lifelong church." This case, like *Kersey* involves the expulsion of a church member who filed a defamation action. The alleged defamatory statements were read to the church congregation on March 30, 2008 from the church pulpit, as set forth in the Complaint, Paragraph 6.

Because the statements were read aloud during an ecclesiastical undertaking, the statements are protected by the ecclesiastical abstention doctrine, and the Defendant's Rule 12.02 Motion to Dismiss should be granted.

Mr. Johnson appeals arguing the inapplicability of the Ecclesiastical Abstention Doctrine.

I. STANDARD OF REVIEW

A Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint itself. *Willis v. Dept. of Corrections*, 113 S.W.3d 706, 710 (Tenn. 2003); *Doe v. Sundquist*, 2 S.W.3d 919, 922 (Tenn. 1999). The standard of appellate review of a dismissal under Rule 12.02(6) requires that we take the factual allegations in the

complaint as true. *Willis*, 113 S.W.3d at 710. The trial court should grant a motion to dismiss only “when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.” *Willis*, 113 S.W.3d at 710.

II. ANALYSIS

The issue on appeal pertains to whether the trial court is correct that pursuant to the Ecclesiastical Abstention Doctrine the trial court lacked subject matter jurisdiction to entertain Mr. Johnson’s claims of defamation against Reverend Carnes.

This court recently had occasion to discuss in depth the Ecclesiastical Abstention Doctrine in the context of defamation actions in *Anderson v. Watchtower Bible and Tract Society of New York*, M2004-01066-COA-R9-CV, 2007 WL 161035 (Tenn. Ct. App. Jan. 19, 2007). After discussing caselaw from other jurisdictions, the court in *Anderson* found as follows:

Having reviewed various analytical approaches to claims such as the ones before us, we conclude that the most appropriate approach is to focus on the central question that is always at the core of an intrachurch dispute where the ecclesiastical abstention doctrine is raised. Regardless of how stated or applied, the overriding rule remains that courts cannot intrude into purely religious decisions. Thus, as with any other claim brought in the context of an intrachurch dispute, the question is whether the defamation claims can be determined without running afoul of the First Amendment. That means, can the specific defamation claim alleged herein be adjudicated “without extensive inquiry . . . into religious law and polity” and “without resolving underlying controversies over religious doctrine,” *O’Connor v. The Diocese of Honolulu*, 885 P.2d at 368, *quoting Milivojeovich*, 426 U.S. at 709-10. That includes inquiry into religious law, court examination of religious belief, or court review of the correctness of the church tribunal’s decision. If, to resolve the particular claim brought, a court would need to resolve underlying controversies over religious doctrine, then the claim is precluded. *Milivojeovich*, 426 U.S. at 709-10.

Where the allegedly defamatory statements refer to or are based upon religious doctrine or church governance, resolution of the truth or falsity of those statements, a determination critical to a defamation action, would require courts to inquire into and resolve issues of church teachings and doctrine, clearly matters of ecclesiastical cognizance.

Id. at *30.

It is clear from the *Anderson* opinion that the exclusion of a member is an intricate part of church governance and, as such, the courts will not interfere.

The First Amendment protects matters arising from the pastor-church relationship from secular court inquiry and review, including defamation claims related to disciplinary or employment decisions. *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d 929, 936 (Mass. 2002). **The same reasoning applies to defamation claims arising out of church disciplinary or expulsion proceedings involving a member, since the church-member relationship is a fundamentally ecclesiastical matter.**

Id., at *26 (emphasis added).

Mr. Johnson first argues the Ecclesiastical Abstention Doctrine is inapplicable since he is not challenging or seeking compensation related to the decision to exclude him from membership in the church but, rather, is seeking compensation for the defamatory statements in the letter. As *Anderson* explains, the Ecclesiastical Abstention Doctrine does not cloak only the disciplinary or expulsion decision itself, but also statements made attendant to the decision.

As to internal disciplinary proceedings, courts will not dictate to a congregation or to church officials that they may not freely speak their minds. *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America*, 860 F.Supp. at 1199.

When a person voluntarily joins a religious organization and submits to its governance, that person consents to the final decision by that organization's tribunals without recourse to civil courts. That consent includes consequences of church discipline that flow from the expulsion process. *Hadnot v. Shaw*, 826 P.2d at 987-88. But, "[t]he First Amendment's protection of internal disciplinary proceedings would be meaningless if a parishioner's accusation that was used to initiate those proceedings could be tested in a civil court." *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d at 937. In other words, where a lawsuit alleging defamation would require court adjudication of the same issues decided by the church tribunal, and therefore a determination of the correctness of the church's disciplinary or membership decision, the ecclesiastical abstention doctrine requires dismissal for lack of subject matter jurisdiction.

Id., at *27.

Mr. Johnson then maintains that nowhere in his complaint does he allege that the letter was related to church discipline or expulsion. Consequently, since the complaint failed to make any allegations about the *context* of the letter which is critical to determine applicability of the Ecclesiastical Abstention Doctrine, and the matter is before the court on a motion to dismiss, the trial

court erred in concluding that the letter was a part of the proceedings to exclude Mr. Johnson from the church.¹

Mr. Johnson's argument overlooks the language of the letter itself, the participants, and the context wherein the letter was published, which are part of the allegations in the complaint. The letter is from an attorney purporting to represent the church. The letter speaks exclusively to Mr. Johnson's interaction with the church membership and staff. The letter also discusses in at least two places the terms upon which Mr. Johnson's relationship with the church ended. First, the letter provides "this letter is intended to make clear that you are not to come back on to [church] property." Second, the letter provides "the Church and Mr. Carnes desire to end the unfortunate turn of events peaceably. Therefore, they ask that you go your separate way and refrain from any future contact with the Church, its Pastor, Deacons or members." Finally, Mr. Johnson does not allege dissemination of the letter to the general public, only that it was read by Mr. Carnes to the church congregation.

It is clear from the letter that, based upon Mr. Johnson's alleged inappropriate behavior, he was being told to have no further contact with the Church. In order to decide Mr. Johnson's defamation allegations arising from the letter, it would be necessary for the court to determine the factual accuracy of the grounds obviously relied upon by the church to exclude him.² A determination of the accuracy of the grounds to exclude Mr. Johnson is a determination of the correctness of the church's membership decision. Consequently, the Ecclesiastical Abstention Doctrine requires dismissal for lack of subject matter jurisdiction. Accordingly, any allegations of defamation arising from the letter were properly dismissed by the trial court.

Even if reading the letter to the church on March 30 was not an expression of the decision to exclude Mr. Johnson from the church and that decision had been made days earlier, as argued by Mr. Johnson at oral argument, the content of the letter is nevertheless still cloaked by the Ecclesiastical Abstention Doctrine since the letter to Mr. Johnson is related to his expulsion from the church. In what appears to be some alternative argument, Mr. Johnson seems to argue on appeal that he had been expelled from the church when he received the letter near the time it was dated, March 17, 2008. Since the letter expelling him was read to the congregation on March 30, he argues that reading of the letter was not a part of church discipline or expulsion.

However, even if Mr. Johnson's actual expulsion occurred before the letter was read to the congregation on March 30, the statements in the letter continue to be protected. As described in *Anderson*:

¹ Later Mr. Johnson argues that the complaint reveals Mr. Johnson was expelled when he received the March 17 letter. We will address this alternate argument below.

² This is true because in order to prove defamation, Mr. Johnson would need to prove that the grounds relied upon by the church to exclude him cited in the letter were false. *Sullivan v. Baptist Memorial Hospital*, 995 S.W.2d 569, 571 (Tenn. 1999).

The protection afforded by the First Amendment to church disciplinary proceedings applies to statements made after the church's decision if the statements or actions are merely implementation of, still part of, inextricably related to, or a consequence of the decision. "Within the concept of protected implementation are not only the religious disciplinary proceeding's merits and procedure but also its end product - the expulsion sanction." *Hadnot v. Shaw*, 826 P.2d at 987-88. Thus, the church's communication of the fact and reason for excommunication are protected from judicial inquiry and review. *Id.* Announcing an expulsion or disfellowship to the members of a church is part of the disciplinary proceedings, particularly where instruction to church members regarding the expelled party is part of the church's belief and practice.

...

Thus, the act of informing the members of the church of disciplinary or expulsion actions is as much within the rights protected by ecclesiastical abstention as is the church's right to take such actions, even though it may carry some kind of negative implication about the expelled member. Statements to church members in regard to disciplinary actions against other members are privileged for the same reasons that the membership decision is protected. *See Kliebenstein v. Iowa Conference of Methodist Churches*, 663 N.W.2d 404, 407 (Iowa. 2003); *Rasmussen v. Bennett*, 741 P.2d at 758.

Id., at *28 (emphasis added).

Consequently, whether the letter embodied the disciplinary or expulsion decision of the church or was simply related to the decision, under the Ecclesiastical Abstention Doctrine the trial court lacked subject matter jurisdiction to entertain claims of defamation allegedly made by the church minister in reading the letter to the congregation.

Mr. Johnson also argues that the trial court also erred when it dismissed Mr. Johnson's allegations that Reverend Carnes' description of him as a "bad influence" to Mr. Johnson's wife and church members was defamatory. In order to be actionable the statement must involve fact and not a matter of simple opinion. *Milkovich v. Lorain Journal, Inc.*, 497 U.S. 1, 20 (1990); *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000); *Windsor v. Tennessee*, 654 S.W.2d 680, 685 (Tenn. Ct. App. 1983). Furthermore, a minister's comments to church members about who is and is not a "bad influence" likewise involves religious belief, the truth or falsity of which requires examination of what is or is not appropriate religious influence.

The trial court is affirmed. Costs of appeal are assessed against Richard Johnson for which execution may issue if necessary.

PATRICIA J. COTTRELL, P.J., M.S.